

**Air Regulatory Enforcement Policy
For the State of Kansas**

**Kansas Department of Health and Environment
Division of Environment
Bureau of Air and Radiation**

July 14, 2005

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I. INTRODUCTION

In accordance with K.S.A. 65-3018 of the Kansas Air Quality Act, the Secretary of the Kansas Department of Health and Environment (KDHE) has the authority to impose administrative fines not to exceed \$10,000 per day per violation. The statute further states that the penalty imposed “will constitute an actual substantial economic deterrent to the violation for which it is assessed.”

Once enforcement by KDHE has begun, the alleged violator will have the opportunity to resolve the case through a settlement agreement with KDHE. The settlement will be in the form of a Consent Agreement and Final Order of the Secretary (CAO) for the resolution of the enforcement action, and will include an agreed civil penalty to be paid by the alleged violator. Supplemental environmental projects (SEPs) may be considered in lieu of portions of the penalty. For more information about SEPs, review the KDHE Bureau of Air and Radiation SEP Policy.

This document has been prepared to establish procedures to be used by KDHE personnel in developing proposed administrative penalties for consideration by management of KDHE for violations of the state and federal air quality regulations. Criminal enforcement cases are not covered by this enforcement policy.

The procedures contained in this document are intended to be used solely as guidance for KDHE personnel in conjunction with the overall Division of Environment Enforcement strategy and other KDHE guidance as part of a comprehensive Bureau of Air and Radiation (BAR) compliance and enforcement program. Each proposed enforcement action and/or administrative penalty must be approved by the Director of BAR, the Director of Environment, and the Secretary of KDHE before it is final. During the process of developing enforcement actions and penalties, agency management may revise the proposed action at any time. This policy is intended to serve only as guidance, with final decisions made by KDHE management during the process. This policy document is not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any in litigation with the State of Kansas. KDHE reserves the right to variances with this policy in those cases where individual circumstances dictate a lower or higher penalty.

II. GOALS

This policy has been prepared to accomplish multiple goals.

- A. To ensure that any administrative penalty issued by KDHE will have the deterrent effect required by the statute.

- B. To recognize facilities that have shown exemplary effort to comply with existing environmental regulatory requirements by investing in environmental improvements beyond the minimum required. This will be accomplished by including such expenditures in the calculation of penalties.
- C. To ensure consistent, equitable treatment in the calculation of penalties.
- D. To ensure the wise use of limited program resources by developing an easy-to-follow formal process which can be readily applied to most circumstances.

To achieve these goals, this policy outlines procedures to ensure factors specific to the facility and the violation are considered in developing the penalty amount.

III. DETERMINING NONCOMPLIANCE

A. Methods

There are several different ways that BAR might discover a noncompliance. Compliance inspections are conducted by local agencies and KDHE district inspectors. The purpose of an inspection is to assess the source's compliance with applicable state and federal air quality regulations and permit conditions. The same inspectors also investigate complaints. For example, a neighbor might call to report a visible plume caused by control equipment being non-functional. If the control equipment is required by a regulation or permit, then a noncompliance exists. Performance tests physically measure the emissions under controlled conditions from an emission point at a source or emission unit. Performance testing is usually conducted because a state rule, a federal rule, or a permit requires it to demonstrate compliance with an emission limit. Sometimes the test indicates that a facility is not in compliance with the applicable emission limit. BAR also reviews reports required by permits, state and federal regulations, and Consent Agreements and Final Orders of the Secretary (CAOs) or Administrative Orders (AOs). If the reports document that a noncompliance exists, then BAR must address the issue.

B. Type of Response

If a noncompliance is discovered, BAR will respond in one or more of the following ways:

1. Noncompliance Actions (these actions may be completed by either BAR staff or by district or local agency inspectors)
 - On-site review and discussion
 - Notice of Noncompliance (NON)
 - Follow-up inspections after issuance of NON

- Referral to K-State's Small Business Environmental Assistance Program (SBEAP) for assistance
- Referral to BAR compliance or permitting staff for assistance
- 2. Enforcement Responses
 - Administrative Order (AO)
 - Consent Agreement and Final Order of the Secretary (CAO)
- 3. Civil Enforcement
 - Referral to State Attorney General (AG) office for district court filing
 - Referral to AG office for emergency cease and desist orders (all referrals are by the KDHE Legal Office and Secretary of KDHE only)
- 4. Criminal Enforcement
 - Referral to AG office
 - Referral to federal criminal enforcement agencies (Department of Justice) (all referrals are by the KDHE Legal Office and Secretary of KDHE only)

IV. DETERMINING THE PENALTY

A. The Base Penalty

The first step in determining the proposed administrative penalty is to establish the base penalty. The base penalty is determined by using the table in Appendix A. This table lists various violations grouped by functional categories such as permitting, reporting, emissions, monitoring and record keeping. Where appropriate, each functional category is further subdivided into categories for small and large sources of air pollutants. Within each of these categories is a base penalty for a functional category of violations.

For the purposes of this policy, air pollution sources will be divided into two categories based on actual emissions from the source. Large emitters are those sources with actual emissions greater than 100 tons per year of oxides of nitrogen, sulfur dioxide, carbon monoxide, particulate matter, particulate matter with an aerodynamic diameter of 10 microns or less, and volatile organic compounds. Large emitters also include those sources with actual emissions greater than 10 tons per year of an individual hazardous air pollutant (HAP) or 25 tons per year of any combined HAPs. Small emitters are sources that have actual emissions below the above thresholds. Large emitters are much more likely to impact public health or the environment and the penalties for such sources should reflect this fact. The table in Appendix A has separate columns for large emitters and small emitters. A base penalty amount is established for large emitters and for small emitters in each of the functional categories of violations.

Facility specific and violation specific factors will affect the final proposed penalty amounts. Subsection B, Modifying the Base Penalty, will describe various factors related to the violations that are reviewed and may be taken into consideration for penalty amount determination. In addition, Subsection B addresses the gravity of these factors related to the violations for the purpose of appropriate and consistent modification of the base penalty amount.

The Penalty Calculation Worksheet contained in Appendix B will be used to develop the proposed penalty amount. The base penalty for a specific violation is entered into the Penalty Calculation Sheet and is the starting point for development of the proposed penalty amount.

B. Modifying The Base Penalty

To promote equity, the system for penalty assessment must have enough flexibility to account for the unique and specific facts of each case, yet still produce consistent results to ensure similar violations among similar violators are treated with consistency. This is accomplished in this policy by identifying many of the legitimate differences between cases and providing guidelines for adjusting the base penalty amount when some of these conditions occur. This section of the policy will address how the administrative penalty development will take into consideration the factors related to facility and violation specific factors. The following factors regarding the facility will be evaluated for each case:

- The violator's full compliance history
- The violator's good faith efforts to comply, or negligence in complying
- Facility emission levels

The factors designed to measure the seriousness of the violations are as follows:

- Actual or potential harm to the public health or environment
- Number or duration of violations
- Importance to the success of a particular regulatory strategy

These factors are then evaluated and used to modify the base penalty amount obtained from the table in Appendix A. The base penalty amount can be increased or decreased as a result of the consideration of the factors listed above. Both groups of factors will be discussed in greater detail in the following subsections 1 and 2.

1. Facility-Specific Factors

The evaluation of the facility-specific factors will be performed one time for all of the violations covered by a specific administrative action. Each of these factors described below will be evaluated as it applies to a specific case. In those cases where a factor is not relevant, the Penalty Calculation Worksheet should be marked to indicate non-relevancy. For all others evaluate the factor and document the result on the worksheet. The procedures and criteria to be used in evaluating each of the above factors are described below.

a. The Compliance History

The first factor to be evaluated is the violator/facility's full compliance history. This factor rates the facility's past environmental compliance history, including past notices of noncompliance, administrative orders, penalties and civil or criminal actions. The primary focus of the compliance history evaluation will be for violations related to the air quality control program, but past enforcement actions in other environmental programs may be taken into consideration as well in the determination of the compliance history multiplier factor. The compliance history will be evaluated by conducting a file review within the Bureau of Air and Radiation, by accessing the departmental databases to review past administrative or civil actions against the company or facility, and by contacting compliance staff from other bureaus with the Division of Environment to determine whether current violations are being addressed. Criteria that will be evaluated will include:

- Existence of administrative, civil, or criminal environmental actions against the company or facility issued by KDHE or another governmental agency.
- The level of penalties that were assessed in past administrative, civil, or criminal actions against the company or facility.
- The number of notices of noncompliance issued to the company or facility in the past.
- Whether or not past agency actions were taken for similar violations as contained in the current proposed action.

In the evaluation of the above criteria, greater emphasis should be placed on actions or notices of noncompliance that have occurred within the past five years. Actions that are older than five years may not be indicative of current operating or management practices.

The base penalty amounts contained in the table in Appendix A were established for air pollution emission sources with a good compliance history. Companies or facilities with a history of noncompliance will have the base penalty adjusted upwards, up to 100%, depending upon the number and degree of the above factors that are established in the company or facility compliance history review.

b. Violator's Good Faith Efforts to Comply

The second set of factors to be evaluated is the violator's good faith efforts to comply, or negligence in complying with the Kansas Air Quality Control Statutes and Regulations. The following components should be evaluated when assessing this factor.

- The degree of control the violator had over the events constituting the violation.
- The foreseeability of the events constituting the violation.
- The level of sophistication within the industry in dealing with compliance issues or the accessibility of appropriate control technology (if this information is readily available).
- The extent to which the violator knew or should have known of the legal requirement which was violated.

Degree of cooperation: The degree of cooperation from the violator in remedying the violation is an appropriate factor to consider in adjusting the penalty. Cooperation by a violator includes activities such as promptly self-reporting noncompliance, instituting comprehensive corrective action after discovery of the violation, and cooperating during any investigation of the violation. In evaluating the degree of cooperation by a source, agency staff will review the timeliness of the response by the facility and the quality of the response.

The base penalty amounts in Appendix A were established assuming the source was not willful or negligent and cooperated with the agency to resolve the violations. If the evaluation of the facility shows signs of willfulness or negligence or the facility has not been cooperative in resolving violations, the base penalty amount will be increased. The base penalty amount can be increased up to 50%. For those cases where the facility has shown a very timely response along with a very high quality response, the base penalty amount can be decreased up to 50%.

c. Facility Emission Levels

As discussed earlier, air pollution sources are divided into two categories based on actual emissions from the source, large and small. Large emitters are much more likely to impact public health or the environment and the penalties for such sources should reflect this fact. A base penalty amount is established in Appendix A for large emitters and for small emitters in each of the functional categories of violations.

2. Violation-Specific Factors

The first three factors considered in modifying the base penalty amount focus on historical and current conditions related to the facility or company that is the subject of the enforcement action. The next group of factors that will be considered relate to the nature and severity of the violations. The evaluation of the actual violations will be performed on each separate violation and an appropriate adjustment made for each violation. Each of the factors described below will be evaluated as it applies to each violation. In those cases where a factor is not relevant to the violation, the penalty worksheet should be marked as such. For all other factors, the person doing the penalty calculation should complete the evaluation of the factor and document the result on the worksheet. The procedures and criteria to be used in evaluating each violation are described in further detail below.

a. Actual or Potential Harm to Public Health or the Environment

This factor evaluates whether, and to what extent, the violation actually resulted or was likely to result in the emission of pollutants that cause harm to the public health or the environment. The base penalty (Appendix A) establishes lower penalty amounts for potential emissions than actual emissions. These base penalty amounts are also based on the assumption that an actual release did not cause harm to the public health or the environment. In those cases where documented health or environmental effects occurred as a result of a release, the base penalty amount should be increased, up to 50% of the base penalty amount. The highest documented level of emission violation may be considered when evaluating this factor. If that high level is not representative of the violation time period, a more representative level may be used.

b. Number and Duration of Violations

Certain violations will normally be evaluated as discrete events. For these situations, each documented violation will be assessed a

penalty based on the base penalty (Appendix A). These violations involve events that are short in duration, or are discovered and documented during an inspection. Repeat occurrences would be dealt with as separate violations. Examples of such violations would be failure to submit a notice, or failure to monitor an emission at a particular point in time. Failure to perform such an action cannot readily be corrected by performing the action at a later date.

Other violations are considered to be continuing in nature. These violations exist until the source performs the required actions needed to bring the facility into compliance. Examples of continuing violations include, but are not limited to: operating without a required permit; failure to conduct a performance test when required; and emissions violations that are documented through continuous emissions monitoring systems; or through performance tests showing a facility out of compliance with an emission standard or limitation for a period of time.

The base penalty amounts contained in Appendix A were established for discrete violations that are addressed promptly. To determine the number of events that should be attributed to a continuing violation, the violations will be characterized by the type and severity of violation. In regard to type, each violation will be designed as: actual release, potential release, or programmatic. In regard to severity, each violation will be characterized as either major or minor. After characterizing the type and severity of a continuing violation, Table A will be used to determine the number of events that should be attributed to the violation. The source's efforts and timeliness in eliminating an emissions violation will be considered in determining the number of events that will be used for those continuous violations that are not treated as single events as single events in Table A.

Table A. Characterizing Continuous Violations for Penalty Calculations		
Type of Violation	Severity of Violation	Number of Events
Actual Release	Major	Up to daily
	Minor	Up to monthly
Potential Release	Major	Up to monthly
	Minor	Single event
Programmatic	Major	Up to monthly
	Minor	Up to monthly

c. Importance to the Regulatory Strategy

This factor focuses on the importance of the requirement to achieving the goals of the Kansas Air Quality Control Act and federal Clean Air Act and implementation regulations. For example, the New Source Performance Standard (NSPS) regulations contained in 40 CFR Part 60 may require owners and operators of new sources to conduct emissions testing and to report the test results within a certain time after startup. If a source owner or operator does not report the test results, KDHE would have no way of knowing whether that source is complying with the applicable NSPS emission limits. Non emission-related violations are considered to be programmatic in nature.

The base penalty amounts contained in Appendix A assume that all or most of the program requirements have not been met by the source. In cases where portions of the requirement have been met, reductions from the base penalty amount may be considered.

C. Calculating the Economic Benefit of Noncompliance

An important goal of this policy is the equitable treatment of the regulated community. One mechanism for promoting equitable treatment is to recover the economic benefit of noncompliance in an administrative penalty assessment. This approach prevents violators from benefiting from their noncompliance relative to parties who have complied with environmental requirements. In order to ensure that penalties recover any significant economic benefit of noncompliance, it is necessary to have reliable methods to calculate that benefit. The existence of reliable methods also strengthens KDHE's position in both litigation and negotiation of assessing civil penalties.

This section sets out guidelines for computing the economic benefit components. It first addresses costs that are delayed by noncompliance. Then it addresses costs that are avoided completely or in part by noncompliance. It also identifies issues to be considered when computing the economic benefit component for those violations where the benefit of noncompliance results from factors other than cost savings. The section concludes with a discussion of the circumstances where the economic benefit component may be mitigated.

1. Delayed and Avoided Cost

In many instances, the economic advantage to be derived from noncompliance is the ability to delay making the expenditures necessary to achieve compliance. For example, a facility that fails to

install a scrubber will eventually have spent the money needed to install the scrubber in order to achieve compliance. An economic advantage can also result from avoiding costs entirely. Avoided costs are associated with activities that should have taken place in the past, that will not or cannot be performed when the violation is discovered. This could be because conducting the activity would not be possible or would no longer serve any purpose. An example of avoided costs is the operations and maintenance expenses for an air pollution control device that was not installed when required by a regulation. The following items will be evaluated for each violation to determine whether a source has gained economic benefit through delayed or avoided costs during the period of time of the violation:

- Did the source avoid or delay capital outlay for air pollution control equipment, process changes needed to reduce air pollution, or air pollution monitoring equipment required by a permit or rule applicable to the facility or unit that is the subject of the violation?
- Did the source accrue any interest by avoiding or delaying capital for air pollution control or monitoring equipment that is applicable to the facility or unit that is the subject of the violation?
- Did the source avoid or delay maintenance or operating costs for existing air pollution control or monitoring equipment or required equipment that was not installed?
- Did the source avoid or delay contractual costs by failing to conduct or delaying performance tests or other required activities normally conducted by third parties?
- Did the source avoid operation and maintenance costs by disconnecting or failing to properly operate and maintain air pollution control or monitoring equipment?
- Did the entity receive revenue due to noncompliance?

If the answer is “yes” to any of the above questions, then BAR compliance staff will estimate the economic benefit gained from noncompliance. In the Kansas air quality program, the most likely cases where a source will realize significant economic benefit from noncompliance are in the Prevention of Significant Deterioration (PSD) program and implementing RACT rules in the Kansas City metropolitan area. In cases where the economic benefit of noncompliance is moderate, BAR compliance staff will use a simplified version of determining economic benefit where only capital expenditures, one-time non-depreciable expenditures, and periodic costs such as maintenance and operational costs will be evaluated to perform the calculation of economic benefit.

Capital expenditures include all depreciable investment outlays necessary to achieve compliance with the environmental regulations or

permit conditions. Depreciable capital investments are usually made for items that eventually wear out, such as buildings, equipment, or other long-lived assets. Examples of typical capital investments that would be evaluated are baghouses, scrubbers, or other air pollution control equipment. One-time, non-depreciable expenditures include delayed costs the facility would have made earlier in order to prevent the violation. Such costs are for items that need only be made one time and do not wear out. Examples of these costs may include purchasing land or setting up a data monitoring system. Periodic costs are those recurring costs that are associated with operating and maintaining required pollution control or monitoring equipment.

In those cases where substantial economic benefit has occurred, BAR compliance staff may use the BEN model prepared by the Environmental Protection Agency to reflect those financial conditions existing in Kansas. The calculated economic benefit of noncompliance may then be adjusted.

2. Adjustments to the Economic Benefit Calculation

This policy will take into consideration the facility's proactive environmental status to adjust the economic benefit calculation portion of a proposed penalty. The intent is to encourage facility management to perform activities conducive to environmental protection that are above and beyond those required by federal, state, and local environmental, safety or public health regulations. Activities that meet these criteria would include, but are not limited to, pollution prevention expenditures, implementation of an environmental management system (EMS), and environmental related plant improvements and ISO 14,000 certifications. Expenditures for all environmental media and programs may be considered during the preparation of the AO or CAO, if KDHE has information available regarding such activities. In addition, such a program may be considered during settlement negotiations in the case where a facility can document expenditures for such activities after receipt of the administrative order. The policy allows for a consideration of up to a one-on-one reduction in the economic benefit calculation for those documented activities.

The agency person assigned to develop the penalty will contact K-State's Pollution Prevention Program to determine whether the facility has submitted applications for or received awards for pollution prevention or recycling activities at the facility.

The following factors will be afforded consideration by BAR compliance staff in evaluating whether an activity or expenditure

qualifies to be considered in reducing the economic benefit calculation:

- Was the improvement or change the adoption of an innovative pollution prevention technology that resulted in a significant environmental benefit?
- Facilities that have received grants from KDHE or other governmental agencies will not be able to consider the grant expenditures as dollars spent on proactive environmental projects.
- Was the improvement or change required in a federal, state or local air quality, safety, or public health regulations, such as a Maximum Achievable Control Technology (MACT) standard or Reasonably Available Control Technology (RACT) rule?
- Did the improvement or change result in a quantified and measurable reduction in the release of pollutant into the environment?

There are two additional circumstances where mitigating the economic benefit component of the proposed penalty may be appropriate. The first of these is when the economic benefit component involves an insignificant amount. Assessing the economic benefit component and subsequent negotiations will often represent a substantial commitment of resources. Such a commitment may not be warranted in the case where the magnitude of the economic benefit component is not likely to be significant, and because it is not likely to have substantial financial impact on the violator. For this reason, KDHE will use discretion not to seek the economic benefit where it is less than \$5,000.

Compelling public concerns may result in KDHE not seeking to recover the economic benefit component. This will be done only in cases where it is absolutely necessary to preserve the countervailing public interests. Such a settlement might be appropriate where the recovery would result in plant closings, bankruptcy, or their extreme financial burden, and there is an important public interest in allowing the facility to continue in business. Alternative payment plans, such as installment payments with interest, should be fully explored before resulting to this option. This exemption does not apply to institutions where there is a likelihood of a continual harmful noncompliance. The economic benefit component may also be mitigated in enforcement actions against nonprofit public entities, such as municipalities and publicly owned utilities, where profit motivations do not apply and assessment threatens to disrupt continued provision of essential public services.


After adjusting the economic benefit component for any above circumstances, the final economic benefit amount is added to the proposed base penalty on the Penalty Calculation Worksheet to reach the proposed

penalty amount. The proposed penalty amount may then be adjusted as described in the following section.

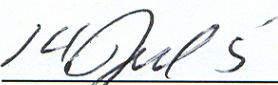
V. CONCLUSION

Treating similar cases in a similar fashion is central to the credibility of the enforcement effort and to the success of achieving the goal of equitable treatment of the regulated community. This document has established several mechanisms to promote such consistency. The document also sets out guidance on uniform approaches for applying adjustment factors to arrive at an initial amount prior to beginning settlement negotiations or an adjusted amount after negotiations have begun. Nevertheless, if KDHE is to promote consistency, it is essential that each case file contain a complete description of how each penalty was developed for a specific case. The Penalty Calculation Worksheet form is the primary means to accomplish this agenda. In those cases where economic benefit has been calculated, a worksheet summarizing calculations will be included in the case file. This policy is intended to serve only as guidance, with final decisions made by KDHE management during the process. During the process of developing enforcement actions and penalties, agency management may revise the proposed action at any time.

VI. APPROVAL



Director, Bureau of Air and Radiation



Date

Appendix A: Base Penalty Amounts for Large and Small Air Pollutant Emitters

Violation	Regulation Citation	Small Emitter	Large Emitter
Emissions Violations:			
Excess emissions in a non-attainment area	Various	\$3,000	\$6,000
Excess emissions in an attainment area	Various	\$2,000	\$4,000
Exceeding the limitations in a permit, including Class II permit limits	N/A	\$3,000	\$4,000
Unauthorized open burning by a permitted source	K.A.R. 28-19-645 K.A.R. 28-19-647	\$1,000	\$2,000
Unauthorized open burning by an unpermitted source, including individuals	K.A.R. 28-19-645 K.A.R. 28-19-647	\$500	\$2,000
Permit/Application Violations:			
Commencing construction, operation or modification of an emissions unit without obtaining a construction approval	K.A.R. 28-19-300	\$1,000	\$2,000
Commencing construction, operation or modification of an emissions unit without obtaining a construction permit	K.A.R. 28-19-300	\$1,500	\$3,000
Commencing construction, operation or modification of an emissions unit without obtaining a PSD permit	K.A.R. 28-19-350	N/A	\$6,000
Failure to submit a timely Class I operating permit application	K.A.R.28-19-500	N/A	\$5,000
Reporting Violations:			
Failure to submit a timely report or notification including compliance certifications, semiannual summary reports, excess emission reports, annual emissions inventory, etc.	Various	\$1,000	\$2,000
Incomplete report or notification	Various	\$500	\$1,000

Appendix A: Penalty Amounts for Large and Small Air Pollutant Emitters

Violation	Regulation Citation	Small Emitter	Large Emitter
Submittal of an incorrect compliance certification by failing to disclose an instance of noncompliance of which is significant to the air program. Significant violations include PSD, NSPS, MACT, etc. with potential emission violations.	K.A.R. 28-19-512	N/A	\$5,000-\$25,000
Submittal of an incorrect compliance certification by failing to disclose an instance of noncompliance of which is less significant to the air program. Less significant violations include record keeping, reporting or other documentation violations with no emission violations.	K.A.R. 28-19-512	N/A	\$1,000 - \$5,000
Record Keeping Violations:			
Failure to maintain required records or maintaining records which are incomplete	Various	\$1,000	\$2,000
Falsification of records	Various	\$2,000	\$4,000
Testing Violations:			
Testing with an improper test method or procedure	Various	\$1,000	\$2,000
Failure to conduct a timely performance test	Various	\$2,000	\$4,000
Monitoring/Title V Periodic Monitoring Violations:			
Failure to install, operate or maintain monitoring equipment required by the Clean Air Act, its implementing regulations or a permit	Various	\$2,000	\$4,000
Failure to conduct monthly qualitative assessments as required by a Title V permit	Various	N/A	\$1,000
Failure to conduct Method 9 opacity testing as required by a Title V permit	Various	N/A	\$2,000
Violations of Administrative Orders or Permit Schedules of Compliance:			
Failure to meet work progress deadline	Various	\$2,000	\$4,000

Appendix A: Penalty Amounts for Large and Small Air Pollutant Emitters

Violation	Regulation Citation	Small Emitter	Large Emitter
Failure to submit required progress reports	Various	\$1,000	\$2,000
Failure to submit payment of civil penalties contained in Administrative Orders and Consent Agreements and Final Orders of the Secretary	Various	Up to \$5,000	Up to \$10,000
Failure to complete other requirements contained in Administrative Orders and Consent Agreements and Final Orders of the Secretary	Various	Up to \$5,000	Up to \$10,000
Other SIP Rule Violations:			
Emission-related violation	Various	\$2,000	\$4,000
Opacity violation	K.A.R. 28-19-650	\$1,000	\$2,000
Programmatic violation	Various	\$1,000	\$2,000

Appendix B

BUREAU OF AIR AND RADIATION PENALTY CALCULATION WORKSHEET

Facility: _____
Case No. _____

Source ID Number: _____
Preparer: _____

A. Economic Benefit:

Description of action that resulted in economic benefit (include dates of noncompliance):

Economic benefit calculated using:
If method other than BEN, attach calculation

BEN Model ☐

Other ☐

Preliminary economic benefit amount: \$ _____

Description of eligible proactive environmental activities performed by company:

Amount spent on proactive activities: \$ _____

Net economic benefit amount: \$ _____

Violation Number 1:

VIOLATION:	BASE PENALTY AMOUNT	\$
Violation Specific Factors:	Adjustment:	Increase/Decrease:
Actual or potential environmental harm	Increased up to 50%	\$
Importance to the regulatory strategy	Decreased up to 50%	\$
Facility Specific Factors:		
Facility compliance history	Increased up to 100%	\$
Negligence in complying with standards or good faith effort to comply	Increased up to 50%	\$
	Decreased up to 50%	
Number or duration of violation	From single event to daily for duration of violation per policy	multiply adjusted amount by _____
ADJUSTED BASE PENALTY:		

Appendix B

Violation Number 2:

VIOLATION:	BASE PENALTY AMOUNT:	\$
Violation Specific Factors:	Adjustment:	Increase/Decrease:
Actual or potential environmental harm	Increased up to 50%	\$
Importance to the regulatory strategy	Decreased up to 50%	\$
Facility Specific Factors:		
Facility compliance history	Increased up to 100%	\$
Negligence in complying with standards good faith effort to comply	Increased up to 50%	\$
	Decreased up to 50%	
Number or duration of violation	From single event to daily for duration of violation per policy	multiply by _____
ADJUSTED BASE PENALTY:		

Violation Number 3:

VIOLATION:	BASE PENALTY AMOUNT:	\$
Violation Specific Factors:	Adjustment:	Increase/Decrease:
Actual or potential environmental harm	Increased up to 50%	\$
Importance to the regulatory strategy	Decreased up to 50%	\$
Facility Specific Factors:		
Facility compliance history	Increased up to 100%	\$
Negligence in complying with standards good faith effort to comply	Increased up to 50%	\$
	Decreased up to 50%	
Number or duration of violation	From single event to daily for duration of violation per policy	multiply by _____
ADJUSTED BASE PENALTY:		

Net economic Benefit amount: \$ _____

Adjusted base penalty amount(s) + \$ _____

Final proposed penalty amount \$ _____